IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV.APPLICATION NO.346 OF 2006

Rajendra Tatoba Magdum .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.S.R.Chitnis, Senior Advocate with Ms.V.R.Raje for applicant
Mr.Rajesh More, A.P.P. for State
Mr.J.C.Satpute for C.B.I.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 17th January 2007

ORAL JUDGEMENT:-

. Rule. Respondents waive service. By consent, rule made returnable forthwith and is heard.

2. This criminal revision application is directed against the order below Exh.34 in Special Case No.8 of 1998. The order under challenge was delivered on 23rd June 2006 and the

learned Special Judge (Prevention of Corruption Act Cases) Raigad held that the order of sanction for prosecution of the present applicant - original accused is legal, valid and proper and the trial can proceed further in pursuance of the same.

3. It is aggrieved by this order that the present revision application is filed.

4. Brief facts leading to the impugned order are, that the applicant original accused before me, is prosecuted and facing trial for offences punishable under section 7, 13(1), (d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short "P.C.Act"). The proceedings are in pursuance of a police report filed by Anti Corruption Bureau, Thane. The summons was issued against the petitioner and he filed an application, Exh.34 praying for discharge. The issue of discharge was argued on the basis that

the applicant while functioning as Asstt.Manager, Port Planning Department, Environment Section of JNPT during the month of January 1997 abused his official position inasmuch as he demanded and accepted illegal gratification from Mr.Uday Dinkar Sathe, Manager of M/s.Unique Nursery, Chinchawad, Pune for certifying bills of Unique Nursery for payment and for not raising objections to the said bills which M/s.Unique had submitted for the execution of the contract work pertaining to maintenance of gardens, lawns, trees, shurbs, abroculture/horticulture works for Port and JNPT township areas. It is alleged that M/s.Unique Nursery, Chinchawad, Pune had been awarded two contracts of arboriculture and horticulture works for port areas and JNPT Township areas and subsequently the contract for port area work was extended by issuing another work order. On 10th January 1997 at about 11.30 hrs. the said Shri Uday Sathe, Manager of M/s.Unique Nursery had submitted two bills of

Rs.2,61,413.84 for the period from 28th November 1996 to 27th December 1996 of Township area and another bill of Rs.1,71,958.60 for the period from 1st December 1996 to 31st December 1996 for Port Area in respect of execution of the aforesaid contract work. Accused while functioning as such was supposed to certify the aforesaid two bills for payments by the Finance Department after satisfying that the same were in order. On 10th January 1997 the accused demanded illegal gratification of Rs.75,000/- from the said Uday Sathe, Manager M/s.Unique Nursery, when the latter contacted the former in connection with the aforesaid two bills submitted in the office. The accused agreed to accept illegal gratification of Rs.25,000/- from the said Uday Sathe for certifying the aforesaid two bills and for not raising any queries thereon. On 13th January 1997 the accused repeated the aforesaid demand of illegal gratification of Rs.25,000/- from the said Uday Sathe, Manager, Unique Nursery

for the aforesaid purpose and agreed to accept the said amount of Rs.25,000/- on 14th January 1997. On 14th January 1997 the accused in pursuance of the aforesaid demand accepted the illegal gratification of Rs.25,000/- from the said Uday Sathe for the aforesaid purpose. The said acts on the part of accused constitute offences punishable under sections 7, 13(1)(d) read with 13(2) of P.C. Act, 1988.

5. The order of sanction issued on 5th May 1998 proceeds on the basis that the applicant was initially appointed in the Forest Department of the State Government as Range Forest Officer and sent on deputation to JNPT as Assistant Manager (Environment) Port and Planning Department. The prosecution proceeds on the basis that the sanction order is legal, valid and proper because although the applicant was sent on deputation to JNPT his initial appointment is by the State of Maharashtra as Range Forest Officer. Therefore,

even if the acts complained of are committed during the course of such deputation, initial appointment being as Range Forest Officer, under the State of Maharashtra, sanction for prosecution could have been granted only by the State of Maharashtra. In other words, the authority who had borrowed the services of the applicant on deputation could not have sanctioned his prosecution, even if the acts complained of were committed during the course of the Applicants' work as Deputationist with JNPT (borrowing authority).

6. The applicant accused on the other hand urges that such a sanction is contrary to section 19 of P.C. Act and it is J.N.P.T. which was sanctioning authority as the acts complained of were committed during the course of applicant's work as Asstt.Engineer (Environment) with J.N.P.T. That objection of the applicant accused is over-ruled and hence, instant revision

application.

7. Mr.Chitnis learned Senior Counsel appearing for applicant submits that the initial appointment of the applicant as Range Forest Officer is immaterial for the purposes of consideration of the issue of sanction. He submits that the applicant may have been sent on deputation to JNPT but it cannot be forgotten that JNPT is governed by Major Port Trust Act, 1963 which is an act of Parliament and the authority thereunder for all purposes including supervision and control of the employees is the Central Government. In other words, his submission is that the disciplinary control over the applicant is that of the Central Government and/or the authority under the Major Port Trust Act. This Act of parliament does not make any distinction between employees directly appointed by JNPT or by Central Government or whose services have been made over to the same. In

these circumstances, the applicant is an employee appointed in connection with the affairs of the Central Government. Therefore, the sanction ought to have been granted only by the Central Government. The Central Govt. having not granted the sanction, the order of sanction passed by the Government of Maharashtra, Revenue and Forest Deptt. is illegal. Mr.Chitnis has invited my attention to the office order pertaining to the applicant, issued on 7th August/12th August 1996. He has invited my attention to Chapter III of the Major Port Trust Act 1963 and contended that the power to make appointments whether temporary or permanent shall be exercisable by the Central Government after consultation with the Chairman of the Board. Section 25 provides for power to promote, grant leave etc. to employees of the Board. He submits that these provisions coupled with the power to make regulations conferred by section 28 would go to show that there is no substance in

the contentions of the prosecution that the initial appointment of the applicant being as Range Forest Officer under the State Government, it is the sanctioning authority.

8. Mr.Chitnis seeks to derive support from the fact that in the F.I.R. itself, it has been pointed out that the applicant being working with JNPT, the investigations were transferred to Anti Corruption Branch, CBI vide letter dated 18th March 1997, since the applicant accused is Central Government employee. According to Mr.Chitnis, this puts the matter beyond any controversy and, therefore, the sanction order is clearly vitiated in law. He submits that the learned Judge failed to appreciate this distinction so also the law laid down by the Supreme Court in the case of R.S.Nayak Vs. A.R.Antulay, reported in A.I.R. 1984 S.C. 684. He submits that the decision relied upon by the learned Special Judge in the case of R.R.Chari

Vs. State of U.P. reported in A.I.R. 1962 S.C. 1573 would not be applicable. Apart from the fact that said decision being distinguishable on facts, the principle laid down therein is no longer good law, in the light of the subsequent Constitution Bench decision of the Supreme Court in the case of Antulay (supra).

9. On the other hand, Mr.Satpute has supported the impugned order. In this context, it is pertinent to note that this Court directed that Union of India should be impleaded as party respondent to this revision application. State of Maharashtra is respondent No.1 whereas Union of India is respondent No.2. Notice was issued to respondent No.2, Union of India and Mr.Satpute appears for Union of India. Union of India supports the impugned order and takes a stand that the sanction order is legal, valid inasmuch as the Central Government is not the sanctioning authority. The sanction has been rightly given

by the State Government as the substantive appointment of the applicant is under the State Government. His services have been made over to the JNPT/Central Government on deputation basis. The law is very clear inasmuch as a person sent on deputation to another organisation does not become an employee of that organisation but continues as employee of the parent department. Therefore, the duration of applicant's service with JNPT is immaterial. For the purposes of applicant's service with JNPT, he is governed by the service regulations of JNPT and the statutory provision referred to by Mr.Chitnis. However, for the purpose of sanction for prosecution under the P.C. Act, the parent department alone would be the proper authority. Mr.Chitnis relied upon the following decisions in addition to the one in the case of Mr.A.R.Antulay. (supra)

i) S.K.Bhatia Vs. C.B.I. (2004 Cri.L.J. 4730)

ii) Dilawar Singh Vs. Parvinder Singh (2005) 12 S.C.C. 709;

10. Mr.Satpute has relied upon the decision in the case of Mr.Chari (supra) and has contended that the view taken by the learned Judge is the only view possible in law. Additionally, Mr.Satpute relies upon a decision of the Supreme Court reported in A.I.R. 1975 S.C. 899 (V.K.Sharma Vs. State (Delhi Administration). He has also sought to distinguish the judgements relied upon by Mr.Chitnis.

11. For properly appreciating the rival contentions, a reference will have to be made to P.C.Act and more particularly Section 19 thereof.

12. A perusal of the same would indicate that the Act is framed for the purpose of curbing and

controlling the corrupt practices and criminal misconduct on the part of public servants. It is not disputed before me that the applicant is a public servant and covered by the P.C. Act. That the offences alleged against the applicant would fall within the purview of the P.C. Act is also not disputed for the purpose of present revision application. The only argument is with regard to the validity and legality of the sanction order. It appears that an application was preferred on 12th January 2006 by the applicant in the above special case alleging therein that in the light of the provisions contained in section 19 of the Act, the Special Judge will have to decide whether legal and valid sanction has been given by the authority competent to remove the applicant from his office. It is urged that the order of sanction for prosecution is not legal and valid. It does not comply with the requirements of law. It is not passed by the authority competent to do so.

In such circumstances, the application of the applicant prayed that the issue of legality and validity of the sanction be decided first and the prosecution be directed to lead evidence.

13. Upon this application a direction was issued with the consent and concurrence of prosecution by learned Special Judge on 2nd March 2006. The direction is that the prosecution must lead evidence on the point of sanction.

14. Accordingly, one Ambadas Vitala, retired Joint Secretary, Government of Maharashtra stepped into the witness box.

15. He states that at the time of his retirement he was working as Joint Secretary, Government of Maharashtra, Revenue and Forest Department. He was holding charge of Forest Department. He received papers of investigation in Crime No.19 of 1997 of CBI, ACB, Mumbai from

the Chief Conservator of Forest (Administration) Nagpur along with his letter. The Chief Conservator of Forest also forwarded to the witness report of CBI. Upon scrutiny of all the papers and a careful examination thereof as per the procedure, record was forwarded to the Secretary, Government of Maharashtra, Department of Law and Judiciary. The said department processed the papers and opined that prosecution should be launched. Thereafter, the papers were forwarded to the R & F.Dept. The Deputy Chief Minister of State of Maharashtra was also the Minister for Revenue and Forest Department. He gave approval for launching prosecution and, thereafter, the draft sanction order was prepared which was approved by L and J.D. and subsequently, issued on 5th May 1998.

16. In the cross examination on behalf of the applicant, a specific Question was put to the witness, and, he answered that the applicant’s

initial appointment was with the State of Maharashtra as Range Forest Officer. He was sent on deputation to JNPT. JNPT is Government of India undertaking. The witness stated that it is true that the service conditions of the Applicant during his period of deputation was, according to rules applicable to the employees of Central Government. As far as the work of the applicant is concerned, according to witness, the applicant was required to follow the guidelines issued by the JNPT. In para 5 of his deposition, the witness has answered that officials in the employment of Central Government are subject to jurisdiction of CBI whereas those in the employment of State Government are subject to the jurisdiction of ACB. J.N.P.T. is within the jurisdiction of Raigad district and it is correct that complaint was made to the officials of ACB at Thane. Offence was registered at Nhava Sheva police station. A suggestion was given to the witness that after the trap, investigation was

handed over to CBI but he denies the same.

17. Be that as it may, from the deposition of the witness it does not appear to me that he was questioned with regard to State Government's competence and authority to sanction prosecution. All that has been done is to give some suggestions with regard to the investigations and the merits of the charges. Therefore, the issue of legality and validity of the sanction as urged before me was apparently raised during the course of oral arguments before the Special Judge. He having permitted raising of the same, in my view, it will be proper to deal with the issue of legality and validity of the sanction order.

18. At the outset, the Supreme Court has time and again observed that a sanction order should speak for itself. A sanction order showing prima facie application of mind is a valid sanction order. It is not necessary to mention in the

sanction order that the sanctioning authority or any one on his behalf has scrutinised the records and arrived at subjective sanction that sanction is necessary. While it is true that the prosecution is bound to prove that valid sanction is granted by the sanctioning authority, it is not as if the sanction order should be so elaborate like an order of court containing detailed reasons. Ultimately the object of grant of sanction is that the authority giving the sanction should be able to consider the evidence and material before it comes to a conclusion that prosecution in the circumstances be sanctioned or forbidden. In C.S.Krishnamurthy Vs. State of Karnataka reported in A.I.R. 2005 S.C.2790 the Supreme Court has observed thus:-

> "8. In this connection, a reference was made to a decision of the Constitution Bench in the case of R.S. Pandit Vs. State of Bihar reported in

(1963) Supp. 2 SCR 652 wherein their Lordships after referring to a decision of the Privy Council in the case of Gokulchand Dwarkadas Morarka Vs. The King (A.I.R 1948 PC 82) observed as under:-

> ." Section 6 of the Act also does not require the sanction to be given in a particular form. The principle expressed by the Privy Council, namely that the sanction should be given in respect of the facts constituting the offence charged equally applies to the sanction under Section 6 of the Act. In the present case all the facts constituting the offence of misconduct with which the appellant was charged were placed before the Government. The second principle, namely, that the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction".

9. Therefore, the ratio is sanction

order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself than the satisfction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. That is contained in the sanction order itself. Moreso, as pointed out, the sanctioning authority has come in the witness box as witness No.40 and has deposed about his application of mind and after going through the report of Superintendent of Police, CBI and after discussing the matter with his legal department, he

> accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned Single Judge of the High Court is justified."

In the context of section 197 of Cr.P.C. the Supreme Court has observed that the authority removing the public servant in office may be higher in rank to the appointing authority and its sanction for prosecution, therefore, is not invalid. In other words, a sanction for prosecution given by an authority higher than the appointing authority is valid. However, the sanction cannot be granted by any inferior authority. As far as competency of the authority is concerned, the issue will have to be decided in facts of each case, depending upon the employment of the public servant.

19. In the present case, the Special Judge has held that initial appointment of the applicant was not by the Central Government and, therefore, assuming that he was sent on deputation to the Central Government or any other authority, yet, he continue to be employee in connection with the affairs of the State Government. The State Government was, therefore, competent to remove him from service. In such circumstances, order of sanction by the State Government is legal and valid and not liable to be interfered with.

20. With the assistance of Mr.Chitnis and Mr.Satpute I have perused the relevant statutory provisions and the decisions brought to my notice. It is not possible for me to accede to the submissions of Mr.Chitnis that the decision relied upon by the learned Special Judge viz., R.R.Chari Vs. State of U.P. reported in A.I.R. 1962 S.C. 1573 is no longer a good law in the

light of the decision in the case of Mr.Antulay. Reliance by Mr.Chitnis on the observations of the Supreme Court in para 23 of Antulay's case does not advance his case any further. Para 23 of this decision really emphasises the aspect that sections in the old P.C. Act and I.P.C. codified a well recognised truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This inter relation and inter dependence between an individual and office he holds is substantial and not severable.

21. There is a reference to power to grant sanction and the Supreme Court has reiterated the principle that grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of Government

servants against frivolous prosecution and the aforesaid requirement of sanction must, therefore, be strictly complied with before any prosecution could be launched against a public servant. It is true that the Supreme Court has observed in Antulay's case that the authority which would be competent to judge whether there has been abuse or misuse of office by a public servant is the one competent to remove him from his office. The importance of conferring power to grant sanction on such an authority cannot be in doubt.

22. However, there is substance in the contention of Mr.Satpute that the decision in Antulay's case must be confined to the issue before the Supreme Court viz., whether the sanction was necessary to prosecute Mr.Antulay for various offences alleged to have been committed by him when he was Chief Minister and a public servant. The case is under the old P.C.

Act and there, Antulay was held to be a "public servant" within the meaning of the said term as defined under section 21 of the I.P.C. However, Antulay resigned from his office with effect from January 20, 1982 but continued to be a sitting MLA. It is in such circumstances, that the question arose before the Supreme Court as to whether sanction was necessary for prosecution of Mr.Antulay, who was an MLA. Argument that MLA was a "public servant" within the meaning of the said expression as defined in I.P.C. and sanction to prosecute him was necessary. The Special Judge trying Mr.Antulay accepted the objection that sanction was necessary from the Speaker of the Maharashtra Legislative Assembly and that having not been placed on record, the discharge application deserves to be granted. Ultimately, the Supreme Court allowed the appeal preferred by Mr.Ramdas Nayak original complainant and set aside the order of Special Judge discharging Mr.Antulay. The Supreme Court held

that MLA is not a public servant. While it is true that during the course of deciding the wider issue, the Supreme Court referred to Chari's case, however, perusal of para 19 of the decision of the Supreme Court in Antulay's case would reveal that the reference is for the purpose of emphasising the need for sanction for prosecuting public servant. It was not a case of a person who is permanently and substantively appointed by the State Government and was on deputation.

23. The issue raised before me was neither raised nor was subject matter of decision of the Supreme Court in Antulay's case. Hence, there is no substance in the contention of Mr.Chitnis that Chari's case is impliedly over-ruled or is no longer good law in the light of the decision in A.R.Antulay's case.

24. Now, it is necessary to refer to the decision in the case of Chari. The said decision

of the Supreme Court, according to Mr.Satpute, deals with an identical controversy. The argument before the Supreme Court was that Chari was permanent employee in a gazetted post under Government of Assam in 1941. His services were lent to Government of India. His first appointment was under the Government of Assam. He on transfer came to Delhi in the office of Master General of Ordnance and subsequently transferred to Kanpur as Assistant Iron and Steel Controller. He was later on made Iron and Steel Controller Kanpur circle and he held that post during the period covered by the charges which were held against him. Government of India wrote to Assam Government intimating that it has decided to Re-place the services of Chari at the disposal of Assam Government on the expiry of his leave period. It appears that the leave period was extended by the Central Government from time to time and it suspended Chari and later on arrested him. Thereafter, Govt. of India

accorded sanction for prosecution of Chari under section 197 Cr.P.C. on January 31, 1949. Charge sheet was submitted by the prosecution alleging that Chari along with three of his former assistants had committed various acts of conspiracy, corruption and forgery during the period from 1/1/1946 to 20/9/1946. Prosecution case is summarised by the Supreme Court in paras 3 to 6 of the judgement.

25. At the trial, Chari took a preliminary objection to the legality and validity of the sanction contending that he was not employed by the authority granting sanction and his objection was overruled. Matter was carried to the Allahabad High Court but the challenge failed. Thereafter, the trial proceeded and Chari was sentenced. The matter was then carried by Chari to High Court and the High Court order is referred to in para 8 of the Supreme Court's Judgement. The issue of sanction is raised

before the Supreme Court in the manner recorded in para 16 of the judgement. Another argument was that when the sanction was given the appellant Chari had ceased to be in the employment of Government of India and had been reverted to Assam Govt. If it is established that at the relevant time Chari was employed in connection with the affairs of Assam Government, then Assam Govt. would be competent to give sanction. In para 19 the Supreme Court framed the question viz., Whether the Government of India was competent to grant sanction even if the appellant Chari was at the relevant time person employed in connection with the affairs of Federation. It proceeded to answer the question thus:-

> "19: That takes us to the question as to whether the Government of India was competent to grant the sanction even if the appellant was at the relevant time a

person employed in connection with the affairs of the Federation. Mr.Chari contends that in the case of the appellant whose services had been loaned by the Assam Government to the Government of India, it could not be said that he was a person permanently employed in connection with the affairs of the Federation and so, cl.(a) of S.197(1) would not apply to him at all. He was a person permanently employed in connection with the affairs of a State and that took the case under cl.(b) which means that it is the Governor of Assam exercising his individual judgement who could have accorded valid sanction to the appellant's prosecution. We are not impressed by this argument. It is clear that the first part of S.197(1) provides a special protection, inter alia, to public servants who are not removable

from their offices save by or with the sanction of the State Government or the Central Government where they are charged with having committed offences while acting or purporting to act in the discharge of their official duties; and the form which this protection has taken is that before a criminal court can take cognizance of any offence alleged to have been committed by such public servants, a sanction should have been accorded to the said prosecution by the appropriate authorities. In other words, the appropriate authorities must be satisfied that there is a prima facie case for starting the prosecution and this prima facie satisfaction has been interposed as a safeguard before the actual prosecution commences. The object of S.197(1) clearly is to save public servants from frivolous prosecution, vide Afzalur

Rahman v. Emperor, 1943 FCR 7 at p.12: (AIR 1943 FC 18 at p.21). That being the object of the section, it is clear that if persons happened to be employed in connection with the affairs of the Federation, it was the Governor-General who gave sanction and if persons happened to be employed in connection with the affairs of the State, it was the Governor. What is relevant for the purpose of deciding as to who should give the sanction, is to ask the question : where is the public servant employed at the relevant time? If he is employed in the affairs of the Federation, it must be the Governor-General in spite of the fact that such employment may be temporary and may be the result of the fact that the services of the public servant have been loaned by the State Government to the Government of India. Therefore, having

> regard to the fact that at the relevant time the appellant was employed in connection with the affairs of the Federation, it was the Governor-General alone who was competent to accord sanction. Therefore, our conclusion is that the sanction granted by the Governor-General for the prosecution of the appellant is valid.

26. After holding that the sanction granted under Section 197 of Cr.P.C. by Governor General for Prosecution of Chari is valid, still the Supreme Court went ahead and decided as to whether Chari could be said to be employed in connection with the affairs of the Federation. After reproducing the section 6 of P.C. Act, this is what the Supreme Court has observed in para 21:-

> "21: It would be noticed that the

scheme of this section is different from that of S.197 of the Code of Criminal Procedure. The requirement of the first part of S.197(1) which constitutes a sort of preamble to the provisions of S.197(1)(a) and (b) respectively, has been introduced by S.6 severally in clauses (a) and (b). In other words, under clauses (a) and (b) of S.197(1) the authority competent to grant the sanction is determined only by reference to one test and that is the test provided by "the affairs in connection with which the public servant is employed"; if the said affairs are the affairs of the Federation the Governor-General grants the sanction; if the said affairs are the affairs of a Province, the Governor grants the sanction. That is the position under S.197(1) as it then stood. The position under S.6 of Prevention of Corruption Act

is substantially different. Clauses (a) and (b) of this section deal with persons permanently employed in connection with the affairs of the Federation or in connection with the affairs of the Province respectively and in regard to them, the appropriate authorities are the Central Government and the Provincial Government. The case of a public servant whose services are loaned by one Government to the other does not fall either under cl.(a) or under cl.(b), but it falls under cl.(c). Having regard to the scheme of the three clauses of S.6, it is difficult to construe the word "employed" in cls.(a) and (b) as meaning "employed for the time being". The said words, in the context, must mean "permanently employed". It is not disputed that if the services of a public servant permanently employed by a

Provincial Government are loaned to the Central Government, the authority to remove such public servant from office would not be the borrowing Government but the loaning Government which is the Provincial Government and so there can be no doubt that the employment referred to in cl. (a) and (b) must mean the employment of a permanent character and would not include the ad-hoc or temporary employment of an officer whose services have been loaned by one Government to the other. Therefore,the appellant's case for the purpose of sanction under S.6 will fall under cl.(c) and that inevitably means that it is only the Provincial Government of Assam which could have given valid sanction, under S.6. At the relevant time, S.6 had come into operation and S.6 expressly bars the cognizance of offences under S.161 unless

> a valid sanction had been obtained as required by it. Therefore in the absence of a valid sanction, the charge against the appellant under S.161 and S.165 could not have been tried and that renders the proceedings against the appellant in respect of those two charges without jurisdiction."

27. A bare perusal of paras 19 and 21 of this decision which is dealing with identical controversy and provisions would reveal that the case of a public servant whose services are lent by one Govt. to other does not fall within clause (a) and (b) of Section 6 of P.C. Act, 1947 [Now Sec.19 (a) and (b)]but it falls under clause (c). The Supreme Court has observed that the word "employed" appearing in sub-clauses (a) and (b) of section (6) cannot be read to mean "employed for the time being".

28. The said words must be read as "in permanent employment". It is in this context that the Supreme Court observes and holds that if the services of public servant permanently employed by provincial government are loaned to the Central Government, the authority to remove such public servant from office would not be the borrowing Government but the loaning Government which is the provincial Government and so there can be no doubt that the employment referred to in clauses (a) and (b) must mean the employment of permanent character and would not include ad-hoc or temporary employment of an officer whose services have been loaned by one Govt. to other. The Supreme Court, therefore, faulted the sanction order in that case on facts as that was not given by the Provincial Govt. of Assam.

29. To my mind, learned Special Judge was absolutely right in placing reliance upon the decision of the Supreme Court in R.R.Chari’s case

which is binding upon him as well as me. No decision or authority taking a different view or over-ruling the view in Chari's case has been brought to my notice.

30. Even otherwise, the argument of Mr.Chitnis overlooks the status of "Deputationist" in Service Jurisprudence. In the case of Kunal Nanda Vs. Union of India reported in (2000) 5 S.C.C. 362 the Supreme Court has observed that "Deputationist" cannot claim to be a permanent employee of organisation or the authority at whose disposal his services have been temporarily placed unless such organisation or authority absorbs him in its service. A useful reference can be made to the decision and the observations of the Supreme Court in para 6 thereof, which read thus:-

> "6. On the legal submissions also made there are no merits whatsoever. It

is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad Vs. M.D. U.P. Rajkiya Nirman Nigam Ltd., is inappropriate since the consideration

therein was in the light of the statutory Rules for absorption and the scope of those Rules....."

31. The decision relied upon by Mr.Chitnis of a learned Single Judge of Delhi High Court, far from supporting him would militate against his submissions. The facts in para 2 of the decision in the case of Bhatia (2004 CRI.L.J. 4730) would reveal that Bhatia started his career as Junior Engineer with CPWD and joined Income Tax Department New Delhi on deputation. Sanction for prosecution has been granted by the Supdt.Engineer of the Income Tax i.e. borrowing department. It is in such circumstances that the learned Single Judge of Delhi High Court has allowed the petition of the employee. Thus, the authority for sanction of the employee concerned ought to be the CPWD, according to the learned Judge and not Income Tax where the employee

concerned was working on deputation.

32. The other decisions relied upon by Mr.Chitnis are not on the point at all. In the case reported in 2005 (12) S.C.C. 709 (supra) Dilawar Singh, the issue was not as to whether who was competent to grant sanction but whether sanction is necessary or not. That a valid sanction is necessary goes without saying. Hence, the decision in Dilawar is hardly of any assistance.

33. Once a sanction order has been passed by an authority who is competent under the law to represent the State Government, then the burden is very heavy and the party who challenges the authority of such an order has to show that authority competent to pass sanction order is somebody else and not the officer who passed the same.

34. In the present case, it is not disputed before me that the sanction order is by a competent officer of the State Government viz., Joint Secy.R & F.D. The issue was from a different angle viz., whether Govt. of Maharashtra was competent to grant sanction. The observations in Chari's case ought to be considered in the light of the contentions raised. The Supreme Court clarifies that sub-clauses (a) and (b) of section 6 which is pari-materia to section 19 of P.C. Act, deal with persons permanently employed in connection with the affairs of the State Govt. or the Central Govt. The applicant permanently employed by the Maharashtra State is undisputed services being placed at the disposal of JNPT on deputation, then the order of sanction cannot be faulted at all.

35. I have decided this matter on the touch stone of section 19 of the P.C. Act. Section 19

of the P.C. Act has further provisions and now it is beyond any controversy that the issue of sanction should not be put on such a pedestal as would make it impossible for the prosecution and the Court to prosecute a public servant. The object and purpose of grant of sanction and protection and immunity contemplated thereby does not mean that technical and trivial objections to the legality and validity of the same must be entertained. The sanction order cannot be said to be vitiated merely because, it is termed as "Irregular". In State by Police Inspector Vs. T. Venkatesh Murty, reported in A.I.R. 2004 S.C. 5117, the Supreme Court observes thus:-

> 9. Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in a failure of justice the court shall have regard to

the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

10. Explanation appended to the Section is also of significance. It provides, that for the purpose of Section 19, error includes competency of the authority to grant sanction.

11. The expression "failure of justice" is too pliable or facile an expression, which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Siplock in Town Investments Ltd. Vs. Deptt. of Environment (1977) 1 ALL ER 813; 1978 AC 359). The Criminal court, particularly the superior court should make a close

examination to ascertain whether there was really a failure of justice or it is only a camouflage. (See Shamnsaheb M. Multtani Vs. State of Karnataka (2001 (2) S.C.C. 577).

14. In the instant case neither the trial Court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction that does not affect the validity of the proceeding unless the Court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional Court. The requirement of sub-section (4) about raising the issue,

> at the earliest stage has not been also considered. Unfortunately the High Court by a practically non-reasoned order, confirmed the order passed by the learned trial Judge. The orders are, therefore, indefensible. We set aside the said orders. It would be appropriate to require the trial court to record findings in terms of clause (b) of sub-section (3) and sub-section 4) of Section 19."

36. In the present case, since the argument was that the sanction order was illegal that I have gone into the rival contentions. To my mind, the applicant has raised this contention only to delay the trial in the Special Case which is pending since 1998. To make an application and raise an issue of sanction therein in the year 2006, itself would show the intention of the applicant. Be that as it may, I am of the

opinion that the order of sanction of the applicant is legal, valid and proper and the learned Special Judge has not committed any error of jurisdiction nor his conclusion can be termed as perverse or vitiated by non application of mind so as to call for interference in the revisional and inherent jurisdiction of this Court. Revision application, therefore, fails. The same is dismissed. Rule discharged. Trial to proceed on merits as expeditiously as possible.

(S.C.Dharmadhikari, J).